

Examples of Shari'a Law in American Courts

S.D. v. M.J.R., 2 A.3d 412 (N.J. Super. Ct. App. Div. 2010).

S.D. (wife) and M.J.R. (husband) were both Muslims and citizens of Morocco and both resided in New Jersey. After only three months of marriage, husband began physically abusing wife. The physical abuse administered by husband injured wife's entire body including her breasts and pubic area. Additionally, husband forced himself on wife and had non-consensual sex with her on multiple occasions. Husband stated to wife that Islam allowed him to have sex with her at any time he wished. Wife asked the trial court to grant a restraining order against husband shortly after he verbally divorced her in front of their imam. The trial court refused to issue a final restraining order against husband finding that, although husband had harassed and assaulted wife, husband believed it was his religious right to have non-consensual sex with his wife and that belief precluded any criminal intent on the part of husband. The New Jersey appellate court reversed the trial court and ordered that the trial court enter a final restraining order against husband. The New Jersey appellate court stated that the trial court erroneously allowed the husband's religious beliefs to excuse him from New Jersey's criminal code and that husband knowingly engaged in non-consensual sex with wife.

In re Marriage of Obaidi, 227 P. 3d 787 (Wash. Ct. App. 2010).

Qayoum (husband) and Obaidi (wife) signed a pre-marital agreement known as a "mahr" which was written in Farsi. Husband was a U.S. citizen; had little understanding of any culture outside of America; and did not speak, read, or write Farsi. The contents of the mahr required that husband pay wife \$20,000 at some future date, but husband was not advised about the mahr's contents until after he had signed it. A few months after the couple signed the mahr, they were married in an Islamic wedding; and later they were wed in a civil ceremony. Several months after the civil ceremony, wife was kicked out of the couple's residence and filed for divorce in Washington state court. The trial court found the mahr enforceable and awarded wife \$20,000 per the terms of the mahr. The trial court noted that husband initiated the divorce without good cause; and therefore, was liable, per Islamic law, to pay the amount due under the mahr. The Washington appellate court held that the trial court erred by looking to Islamic law; and instead should have applied neutral principles of law to determine whether the mahr was enforceable. The appellate court stated that under neutral principles of law (Washington contract law) the parties must agree on the essential terms of a contract in order for the contract to be enforceable. Applying this neutral principle of law, the appellate court held the mahr was unenforceable because the parties never agreed why or when the \$20,000 would be due.

Tarikonda v. Pinjari, No. 287403 (Mich. Ct. App. 2009).

Tarikonda (wife) and Pinjari (husband) were married in India in 2001. In April 2008, Pinjari obtained an Islamic summary divorce known as talaq against Tarikonda. In May 2008, Tarikonda, possibly without knowing about the talaq, filed for divorce in Michigan. Pinjari filed a motion requesting that the Michigan trial court recognize the talaq divorce and dismiss Tarikonda's divorce complaint. The trial court granted comity to the talaq Pinjari pronounced in India and dismissed Tarikonda's complaint. The Michigan appellate court reversed the trial court holding that talaq violated Tarikonda's right to due process because: (a) she had no prior notice of the talaq pronouncement; (b) she had no right to be present at the pronouncement and did not have an attorney; and (c) the talaq provided no opportunity for a hearing. The Michigan appellate court also held that talaq violates equal protection because women do not also enjoy the right to

pronounce talaq. Additionally, the Michigan appellate court held that talaq violates Michigan public policy because, upon divorce, Islamic law allows women to recover only the property that is in their names while Michigan law provides for an equitable division of the marital estate.

In re Marriage of Shaban, 105 Cal. Rptr. 2d 863 (Cal. Ct. App. 2001).

Ahmad (husband) and Sherifa (wife) were married in Egypt in 1974; moved to the United States in the early 1980s; and filed for divorce in 1998. Ahmad argued that a document signed by him and Sharifa's father, as her proxy, constituted the parties' pre-marital agreement to have Islamic law govern any property settlement following a divorce. The document recited that the marriage had been concluded in accordance with Islamic law and that the two parties were aware of the legal implications of the marriage. The trial court found the document was not a prenuptial agreement, but instead was a marriage certificate. The trial court applied California law to the division of property. The appellate court recognized that the document was vague about the material terms to which the husband and wife were allegedly agreeing, that there are multiple schools of Islamic legal thought that could govern the agreement, and that no particular school of Islamic legal thought was selected by the parties. The appellate court held that the pre-marital document did not provide sufficient information about the parties' agreement to constitute a valid pre-marital agreement. As a result of the appellate court's holding, California law was applied to the property division and the wife took an interest in the marital property. The wife would have accumulated no interest in these assets under Islamic law since property acquired by a spouse during marriage remains that spouse's separate property.

Aleem v. Aleem, 404 Md. 404, 947 A.2d 489 (Md. 2008).

Husband and wife, both originally from Pakistan, were married in Pakistan in 1980. Shortly thereafter, the couple moved to Maryland where they resided 20 years prior to their divorce. The husband was in the United States on a diplomatic visa. The wife had obtained green card status. The wife initiated a divorce action in a Maryland court; and while the action was pending, the husband went to the Pakistani embassy and obtained an instantaneous divorce under Islamic law known as talaq. Talaq, under the law of Pakistan, would have resulted in the wife not acquiring any rights in the property accumulated by her husband during their marriage. Under Maryland law, she would have acquired marital property rights to assets titled in the husband's name. The lower courts refused to recognize the talaq. The lower appellate court refused to recognize talaq as being contrary to Maryland public policy because of the extreme differences between Maryland and Pakistani law regarding marital property rights. The Maryland Supreme Court also refused to grant comity to the husband's talaq because talaq violated Maryland's public policy. Talaq violated gender equality promoted by Maryland's constitution because talaq was available only the husband and not the wife. Moreover, talaq violated a wife's due process rights because a wife could file for divorce in a Maryland court and the husband could obtain the instantaneous talaq before the wife had an opportunity to fully litigate the divorce filed by her in Maryland court. Talaq also would deprive the wife of the marital property rights that she held under Maryland law.